



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2004

Mr. John Haywood
Law Offices of John Haywood, P.C.
200 South Garcia Street, Suite A-6
Port Isabel, Texas 78578

OR2004-4092

Dear Mr. Haywood:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201721.

The City of Port Isabel (the "city"), which you represent, received six requests for documents concerning the annexation of property by the city. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. Additionally, we have received comments from the Town of South Padre Island. *See* Gov't Code § 552.304 (permitting interested party to submit comments explaining why information should or should not be released).

Initially, we note that five of the requests were for information to be created in the future, *i.e.*, the requests were made on March 3, 2004, and they demanded information through March 15, 2004. A governmental body is not required under the Public Information Act to disclose information that does not exist when a request for information is received. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (interpreting predecessor statute). Therefore, the only information at issue here is responsive information that existed on March 3, 2004.

Next, we must address the city's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e)(4), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. The city did not, however, submit to this office any copies

or representative samples of the requested information. A governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason for nondisclosure exists where some other source of law makes the information confidential. Open Records Decision No. 150 at 2 (1977). Section 552.103 of the Government Code is a discretionary exception to disclosure that may be waived by the governmental body, and therefore does not provide a compelling reason to overcome the presumption of openness. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, we conclude that the requested information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 201721

Enc. Submitted documents

c: Mr. Clifford Rowell
Assistant City Manager
Town of South Padre Island
4501 Padre Boulevard
South Padre Island, Texas 78597

Mr. Jeffery Gilbert
4405 Padre Boulevard
South Padre Island, Texas 78597

Mr. Paul Cunningham
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.
816 Congress Avenue, Suite 1700
Austin, Texas 78701